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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL WRIT PETITION NO.5752 OF 2016

Vikas Bapuso Patil	...Petitioner
Versus	
The State of Maharashtra and Ors.	...Respondents

Mr.S.A.Rajeshirke, for the Petitioner.

Ms.Kavita Salunke, A.G.P for the Respondent Nos.1 and 3.

Mr.Mahamuni J.P., Senior Assistant, Development Branch, Pune is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 4th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the Petitioner has impugned the order dated 7th August, 2015, passed by the Divisional Commissioner, Pune, only to the extent, that (i) it directs the Petitioner to file a fresh application before the District Collector, Sangli, for seeking a revolver license, alongwith an application for sale of the Petitioner's 12 Bore D.B.B.L Gun and (ii) that in the event the District Collector decides to issue a revolver license, the

District Collector should order sale of the 12 Bore D.B.B.L Gun and on the Petitioner submitting a proof of sale of the said weapon, the revolver license be issued.

3. Learned Counsel for the Petitioner submits that there was no justification for the Divisional Commissioner to issue such a direction and that the same was contrary to Section 3 of the Arms Act. He submitted that under Section 3(2) of the Arms Act, a person can possess or carry, at any time, not more than three fire arms on certain conditions. He submitted that the Local Crime Branch, Sangli and Dy. S.P., Islampur, had submitted reports, in favour of the Petitioner, for issuance of a revolver license. Learned Counsel has tendered today, an additional affidavit of the Petitioner. The same is taken on record. In the said affidavit tendered today, the Petitioner has given his no objection for cancelling/surrendering his existing D.B.B.L Gun, after the issuance of a revolver license. Learned Counsel submitted that vide the impugned order, the Petitioner could not have been directed to deposit the D.B.B.L Gun and sell the same, as a condition precedent to issuance of a revolver license. He submits that the Petitioner has a valid license to use a D.B.B.L Gun, since 1995 and that till

date, the Petitioner has not misused the same.

4. Learned AGP has filed an affidavit of Trigun S. Kulkarni, Residential Deputy Collector, Sangli. She submitted that no interference was warranted in the impugned order.

5. Perused the papers. The Petitioner is an agriculturalist as well as an Advocate practicing in Sangli and Islampur. According to the Petitioner, he had applied for issuance of a license for D.B.B.L Gun, for his security and self protection, and after verifying the need etc, the authorities had granted him a license for Double Barrel Gun, being license No.1166/III/Walwa, pursuant to which the Petitioner purchased one 12 double Barrel Bore Gun, bearing No.6129 in 1995. It is not in dispute that the said license for double barrel gun was renewed from time to time and is still in operation. According to the Petitioner, as it is difficult for him to carry the said gun considering its size, he filed an application on 1st September, 2013, before the District Collector, Sangli - Respondent No.3, for issuance of a revolver/pistol license on the existing license. According to the Petitioner, as per the procedure, a report was called for of the Officer

in charge of the nearest Police Station and the concerned Officer after making due enquiry, submitted a report in favour of the Petitioner, for holding a revolver/pistol; that thereafter, the Police Inspector, Islampur Police Station, vide letter dated 11th August, 2014, also gave a favourable recommendation, for issuance of a second license for revolver/pistol; and that even the Deputy Superintendent of Police, Islampur and Local Crime Investigation Branch (L.C.B), Sangli, vide letters dated 17th September, 2014 and 27th November, 2014 respectively recommended issuance of a second weapon i.e. revolver to the Petitioner. It appears that the Superintendent of Police, Sangli, by letter dated 16th December, 2014, gave an adverse recommendation stating that the Petitioner already had one Arms License and hence, there was no reason to issue a license for the second weapon. The District Collector, Sangli, vide order dated 29th December, 2014, rejected the Petitioner's application for issuance of a second Arms License for revolver/pistol, as there was no reasonable ground for issuing a second license. A perusal of the order of the District Collector, Sangli, shows that the said order, was not a reasoned order.

6. Being aggrieved by the said order passed by the Respondent

No.3 *inter alia* rejecting the application for issuance of a license, for a second weapon i.e. revolver/pistol, the Petitioner approached the learned Divisional Commissioner, Pune, in Appeal. The learned Divisional Commissioner, after hearing the parties and considering the reports submitted by the Local Crime Branch, Sangli and Dy. S.P., Islampur partly allowed the said Appeal. The learned Divisional Commissioner, Pune, observed that the District Collector had not decided the Petitioner's application on merits. The learned Divisional Commissioner was however, pleased to consider the alternate request of the Petitioner, i.e. that the Petitioner was ready to deposit his D.B.B.L Gun, if a revolver/pistol license was granted to the Petitioner. Accordingly, the Divisional Commissioner, while partly allowing the Petitioner's Appeal directed the Petitioner to again make an application for grant of license for Revolver alongwith an application for sale of the 12 Bore D.B.B.L Gun; that in the event the District Collector, decided to grant the Petitioner a Revolver license, the Petitioner was directed to sell his weapon i.e. 12 Bore D.B.B.L Gun and on the Petitioner providing proof of the same, the license for Revolver was to be confirmed in favour of the Petitioner.

7. The Petitioner is aggrieved by the said order, inasmuch as, the same is contrary to the Section 3 of the Arms Act, which permits a person to have in his possession or carry, at any time, not more than three fire arms. He submitted that such a direction to deposit the double barrel gun is contrary to the Arms Act. He submitted that once the Divisional Commissioner had come to the conclusion that the Petitioner can be granted a revolver license, no such pre-condition ought to have been put as has been done, for simultaneously depositing the existing gun and for its sale, prior to confirming the issuance of the revolver license.

8. It is not in dispute that the Petitioner is in possession of a double barrel gun, since 1995 and has a valid license which is in existence, till date. Admittedly, under the Arms Act, a person can possess upto 3 Arms, on certain conditions. It appears that the Petitioner had initially applied for grant of a license for a second weapon, however, later the Petitioner expressed his intention and desire to surrender the same, in the event, a revolver license is issued in his favour, before the Divisional Commissioner. Today, the Petitioner, has filed an additional affidavit wherein, he has given the following undertaking. The relevant paragraph 1

and 2 of the said affidavit read thus:-

“1. I say that in the aforesaid matter Hon'ble Court by order dated 26/9/2018 permitted the Petitioner to give undertaking by filing Affidavit regarding depositing/surrendering/selling existing DDBL Gun (*sic DBBL*) in the event if the Petitioner is granted license for Revolver/Pistol.

2. I say that I am presently holding License for DBBL Gun for State of Maharashtra and having one DBBL Gun, I have applied for license for Revolver considering difficulty in carrying existing weapon while travelling. If Respondent no.3 issued license for Revolver, I have no objection for cancelling/surrendering my existing license for DDBL Gun (*sic DBBL*). I undertake that after issuance of license for Revolver, within period of 12 weeks. I will purchase weapon accordingly and simultaneously I will deposit my existing DBBL Gun to concerned Police station/authority and sell the existing DBBL Gun within 12 weeks thereafter.”

9. Having regard to the facts of this case, I am of the opinion that the direction imposed by the Divisional Commissioner vide order dated 7th August, 2015, that the Petitioner file an application for sale of weapon alongwith an application for grant of Revolver license; and the direction to sell the weapon and provide proof of the same, before the license for revolver is confirmed was unwarranted. The Petitioner has filed an additional affidavit wherein, he has given his no objection for

cancelling/surrendering his existing license for 12 Bore D.B.B.L Gun and has stated/undertaken that he would surrender the same after issuance of license for Revolver, within period of 12 weeks, within which he will purchase a revolver and simultaneously deposit his existing 12 Bore D.B.B.L Gun with the concerned Authority and consequently sell the existing 12 Bore D.B.B.L Gun, within 12 weeks thereafter. The said undertaking is accepted.

10. Considering the aforesaid, the Petition is allowed to the extent that the condition imposed by the Divisional Commissioner, Pune, vide order dated 7th August, 2015, directing the Petitioner to file a fresh application before the District Collector, Sangli, for seeking a revolver license, as well as the direction to file an application for sale of 12 Bore D.B.B.L Gun alongwith the said application, as well as the direction to sell the weapon and submit a report of sale, after which, the revolver license be issued, are quashed and set aside.

11. The Respondent No.3 - District Collector, Sangli, shall decide the application filed by the Petitioner dated 1st September, 2013, on

the basis of the report filed before the Authorities, for issuance of a revolver license. The said exercise to be completed within 2 months, from the date of receipt of this order.

12. If the Respondent No.3 – District Collector, Sangli, grants license for revolver, to the Petitioner, the Petitioner shall comply with the undertaking given by him in his additional affidavit. A copy of the additional affidavit to be placed by the Petitioner through his Advocate, before the Respondent No.3 - District Collector, Sangli, for compliance.

13. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

14. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)